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7 FINISHING TOUCHES CONSTRUCTION INC.

8  
9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 \* \* \*

12 FINISHING TOUCHES  
13 CONSTRUCTION INC.,  
a California Corporation,

14 Plaintiff,

15 v.

16 FINISHING TOUCHES  
17 CONSTRUCTION, a California  
Corporation, and WILLIAM DEES.

18 Defendant.  
19

Case No.

**COMPLAINT FOR SERVICE  
MARK INFRINGEMENT, TRADE  
NAME INFRINGEMENT, FALSE  
DESIGNATION OF ORIGIN, AND  
UNFAIR COMPETITION**

**DEMAND FOR JURY TRIAL**

20  
21 COMES NOW Plaintiff FINISHING TOUCHES CONSTRUCTION INC.,  
22 a California Corporation, for its complaint against Defendants FINISHING  
23 TOUCHES CONSTRUCTION, and WILLIAM DEES, hereby alleges as follows:

24 **THE PARTIES**

25 1. Plaintiff FINISHING TOUCHES CONSTRUCTION INC. ("FTCI")  
26 is a corporation organized and existing under the laws of the State of California  
27 having its principal place of business at 909 Lawton Ave., Roseville, CA 95678.  
28

2. Defendant FINISHING TOUCHES CONSTRUCTION, on information and belief, is a corporation organized and existing under the laws of the State of California having its principal place of business at 3615 Argonaut Ave., Rocklin, CA 95677 (hereinafter referred to as “FTC”)

3. Defendant William Dees, on information and belief, is a resident of State of California, County of Sacramento, and is doing business at 3615 Argonaut Ave., Rocklin, CA 95677.

### **JURISDICTION AND VENUE**

4. This is a civil action arising under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and under the statutory and common law of the State of California. Subject matter jurisdiction being expressly conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a). This court has pendant jurisdiction over all related claims herein in accordance with 28 U.S.C. § 1338(b).

5. This Court has supplemental jurisdiction over Plaintiff’s pendent state law claims pursuant to 28 U.S.C. § 1367 in that the state law claims are integrally interrelated with Plaintiff’s federal claims and arise from a common nucleus of operative facts such that the administration of Plaintiff’s state law claims with its federal claims furthers the interest of judicial economy.

6. This Court has personal jurisdiction over defendants because they are residents of the County of Sacramento, State of California, and operate an ongoing construction business in this District.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 in that defendants reside in this judicial district, and defendants have committed a significant number of the offending acts in this judicial district.

### **FACTS COMMON TO ALL COUNTS**

8. This is an action for damages and injunctive relief resulting from the

1 infringement of Plaintiff's service mark and trade name, false designation of  
2 origin, and unfair competition, pursuant to 15 U.S.C. § 1051, et seq., California  
3 Business & Professions Code §§ 17000, et seq., California Business & Professions  
4 Code §§ 17200, et seq., California Business & Professions Code §§ 14330, et seq.,  
5 and the common law.

6 9. Plaintiff and its predecessors have for many years been engaged in the  
7 business of providing construction services interstate commerce under the trade  
8 name and service mark *FINISHING TOUCHES CONSTRUCTION*.

9 10. Plaintiff is the owner and holder of rights in the trade name and  
10 service mark "*FINISHING TOUCHES CONSTRUCTION*" by virtue of Plaintiff  
11 and its predecessors' long-standing use of this mark in connection with  
12 construction services provided in interstate commerce, including the Sacramento,  
13 California area. Plaintiff and its predecessors have been using its *FINISHING*  
14 *TOUCHES CONSTRUCTION* service mark and trade name in connection with  
15 construction services continuously for at least five (5) years, and Plaintiff has  
16 registered its trademark rights with the United States Patent and Trademark Office.  
17 Plaintiff owns federal trademark registration number 7,186,017 (the "'017  
18 Registration") and therefore owns nationwide rights in the *FINISHING TOUCHES*  
19 *CONSTRUCTION* mark. A copy of the '017 Registration is attached hereto as  
20 Exhibit A.

21 11. For many years prior to the acts of defendants complained of herein,  
22 Plaintiff has been and continues to operate under the *FINISHING TOUCHES*  
23 *CONSTRUCTION* name, providing excellent construction services to its clients,  
24 and Plaintiff and its predecessors have extensively marketed such services in  
25 advertising and promotional materials which featured and drew attention to the  
26 *FINISHING TOUCHES CONSTRUCTION* service mark.

27 12. As a result of substantial development, marketing and advertising  
28 expenditures, Plaintiff and its predecessors in interest has developed strong

1 consumer demand for the construction services provided under the *FINISHING*  
2 *TOUCHES CONSTRUCTION* trade name and service mark. This mark is widely  
3 recognized by the trade and the consuming public as identifying Plaintiff as the  
4 source of high-quality construction services. The “*FINISHING TOUCHES*  
5 *CONSTRUCTION*” service mark has acquired a strong secondary meaning in the  
6 mind of the public in connection with Plaintiff’s high quality construction services.  
7 Substantial goodwill of great importance and value to Plaintiff exists in the  
8 *FINISHING TOUCHES CONSTRUCTION* mark.

9 13. Plaintiff FTIC was formed in February of 2022 by its predecessor in  
10 interest, Forrest Whittaker, who adopted the *FINISHING TOUCHES*  
11 *CONSTRUCTION* service mark for use in connection with construction services as  
12 a sole proprietor in 2018.

13 14. On information and belief, subsequent to establishment of Plaintiff’s  
14 business and the continuous use and extensive advertising and use by Plaintiff of  
15 its *FINISHING TOUCHES CONSTRUCTION* service mark and trade name,  
16 Defendants adopted the fictitious business name FINISHING TOUCHES  
17 CONSTRUCTION, which is confusingly similar to Plaintiff’s *FINISHING*  
18 *TOUCHES CONSTRUCTION* trade name and service mark, and began providing  
19 construction services under the FINISHING TOUCHES CONSTRUCTION name  
20 in Sacramento, California. On information and belief, Defendant FTC was formed  
21 in September 2022 by Defendant William Dees.

22 15. William Dees worked for Plaintiff’s predecessor in interest. On  
23 information and belief, Defendants were fully aware of Plaintiff’s prior rights and  
24 use of the *FINISHING TOUCHES CONSTRUCTION* service mark at the time they  
25 adopted their use of the FINISHING TOUCHES CONSTRUCTION name for use  
26 in connection with construction services. Examples of Defendants’ use of the  
27 “FINISHING TOUCHES CONSTRUCTION” name are attached hereto as Exhibit  
28 B and incorporated herein by this reference.

16. Plaintiff is informed and believes and thereon alleges that Plaintiff's trademark rights in the *FINISHING TOUCHES CONSTRUCTION* trade name and service mark are superior to Defendants' rights, if any, in the name "FINISHING TOUCHES CONSTRUCTION" for at least the reason that Plaintiff first made a service mark use of the *FINISHING TOUCHES CONSTRUCTION* trade name and service mark prior to the first use by defendants of the term "FINISHING TOUCHES CONSTRUCTION" and Plaintiff or its predecessors have used the mark *FINISHING TOUCHES CONSTRUCTION* continuously since that first trademark use.

17. Plaintiff is informed and believes, and thereon alleges, that defendants' designation "FINISHING TOUCHES CONSTRUCTION" is a colorable imitation of Plaintiff's *FINISHING TOUCHES CONSTRUCTION* trade name and service mark. Defendants use the name "FINISHING TOUCHES CONSTRUCTION" in commerce in connection with the sale, offering for sale, and provision of construction services. As such, defendants' use of the name "FINISHING TOUCHES CONSTRUCTION" is likely to cause confusion, mistake, or deception among consumers as to the source, quality, and nature of defendants' goods and services.

## COUNT 1

### **SERVICE MARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION UNDER LANHAM ACT § 43**

**(15 U.S.C. §1125(a))**

18. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 15, inclusive, above as though the same were fully set forth herein.

19. Defendants' use of the name "FINISHING TOUCHES CONSTRUCTION" as alleged herein, without Plaintiff's consent, constitutes service mark infringement, false designation of origin, and unfair competition in

1 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants'  
2 service mark infringement, false designation of origin, and unfair competition are  
3 likely to cause confusion, or cause mistake, or to deceive the public as to the  
4 source, quality and nature of defendants' goods and services.

5 20. On information and belief, the designation "FINISHING TOUCHES  
6 CONSTRUCTION" was adopted by defendants with full knowledge of Plaintiff's  
7 successful marketing of construction services under the *FINISHING TOUCHES*  
8 *CONSTRUCTION* service mark, and was adopted with full knowledge of the  
9 goodwill and recognition of the *FINISHING TOUCHES CONSTRUCTION* mark,  
10 for the purpose of trading upon the goodwill associated with Plaintiff's mark, and  
11 to obtain recognition, demand, and salability for Defendants' construction services  
12 that it otherwise would not have had.

13 21. Defendants' unauthorized use of the FINISHING TOUCHES  
14 CONSTRUCTION name has caused confusion, mistake, and deception in the mind  
15 of the purchasing public and, thus, constitutes infringement of Plaintiff's rights, all  
16 in violation of 15 U.S.C. § 1125(a).

17 22. Plaintiff is entitled to recover from Defendants the actual damages  
18 that it sustained and/or is likely to sustain as a result of Defendants' wrongful acts.  
19 Plaintiff is presently unable to ascertain the full extent of the monetary damages  
20 that it has suffered and/or is likely to suffer by reason of Defendants' acts of false  
21 designation of origin.

22 23. Plaintiff is further entitled to recover from Defendants the gains,  
23 profits, and advantages that defendants have obtained as a result of their wrongful  
24 acts. Plaintiff is presently unable to ascertain the full extent of the gains, profits,  
25 and advantages that Defendants have realized by reason of its acts of service mark  
26 infringement, false designation of origin and unfair competition.

27 24. On information and belief, Defendants' acts of infringement are  
28 deliberate and willful, Plaintiff is entitled to an award of enhanced damages and

1 profits under 15 U.S.C. § 1117.

2 25. Defendants' aforesaid acts are greatly and irreparably harming to  
3 Plaintiff and will continue to harm Plaintiff unless restrained by this Court, and,  
4 therefore, Plaintiff is without an adequate remedy at law.  
5

6 **COUNT 2**

7 **TRADEMARK INFRINGEMENT UNDER LANHAM ACT § 32**

8 **(15 U.S.C. § 1114)**

9  
10 26. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1  
11 through 23, inclusive, above as though the same were fully set forth herein.

12 27. On information and belief, Defendants began using the FINISHING  
13 TOUCHES CONSTRUCTION name in California and in this District with full  
14 knowledge of Plaintiff's trademark rights in the *FINISHING TOUCHES*  
15 *CONSTRUCTION* mark for the purpose of trading upon the goodwill associated  
16 with Plaintiffs' mark, and to obtain recognition and demand for its distilled spirits  
17 that it otherwise would not have had.

18 28. Defendants' unauthorized use of the *FINISHING TOUCHES*  
19 *CONSTRUCTION* mark has caused confusion and mistake in the mind of the  
20 purchasing public and, thus, constitutes infringement of Plaintiffs' rights in  
21 violation of 15 U.S.C. § 1114(1).

22 29. Defendants' has actual and constructive notice of FTCI's senior rights  
23 in the *FINISHING TOUCHES CONSTRUCTION* mark. On information and  
24 belief, Defendants' acts of infringement are deliberate and willful. On information  
25 and belief, Defendants are expanding their infringing use of the *FINISHING*  
26 *TOUCHES CONSTRUCTION* mark in this district and others with full knowledge  
27 of Plaintiff's senior rights in its *FINISHING TOUCHES CONSTRUCTION* mark,  
28 with the intention to usurp Plaintiff's rights.







1 violation of the common law. On information and belief, Defendants' acts of  
2 infringement are deliberate and willful.

3 36. Plaintiff is entitled to recover from defendant the actual damages that  
4 it sustained and/or is likely to sustain as a result of Defendants' wrongful acts.  
5 Plaintiff is presently unable to ascertain the full extent of the monetary damages  
6 that it has suffered and/or is likely to suffer by reason of defendants' acts of service  
7 mark and trade name infringement.

8 37. Plaintiff is further entitled to recover from defendants the gains,  
9 profits, and advantages that defendants have obtained as a result of their wrongful  
10 acts. Plaintiff is presently unable to ascertain the full extent of the gains, profits,  
11 and advantages that defendants have realized by reason of their acts of service  
12 mark infringement.

13 38. Defendants' aforesaid acts are greatly and irreparably harming to  
14 Plaintiff and will continue to harm Plaintiff unless restrained by this Court, and,  
15 therefore, Plaintiff is without an adequate remedy at law.

16  
17 **COUNT 4**

18 **UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES**

19 **(California Business & Professions Code sections 17000, et seq. and 17200)**  
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21 39. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1  
22 through 37, inclusive, above as though the same were fully set forth herein.

23 40. Defendants' unlawful conduct, including use of Plaintiff's trade name,  
24 service mark and goodwill for its own benefit, to the likely confusion of the public,  
25 constitutes unfair competition under California Business & Professions Code  
26 sections 17000, et seq. and 17200, et seq. and entitles Plaintiff to such relief as set  
27 forth in those statutes. On information and belief, Defendants' aforesaid acts are  
28 deliberate and willful.



1 and advantages that defendants have realized by reason of their wrongful acts.

2 47. Defendants' aforesaid acts are greatly and irreparably harming to  
3 Plaintiff and will continue to harm Plaintiff unless restrained by this Court, and,  
4 therefore, Plaintiff is without an adequate remedy at law.

5  
6 **COUNT 6**

7 **UNJUST ENRICHMENT UNDER COMMON LAW**  
8

9 48. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1  
10 through 45, inclusive, above as though the same were fully set forth herein.

11 49. By virtue of defendants' wrongful acts described above, defendants  
12 have been unjustly enriched in an amount to be proven at trial.

13 50. Defendants' retention of monies gained through its deceptive business  
14 practices, infringements, and otherwise would serve to unjustly enrich defendants  
15 and would be contrary to the interests of justice.

16  
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff requests that this court enter judgment in its favor  
19 and grant the following alternative and cumulative relief:

20 1. **Accounting.** That defendants be required to account to Plaintiff for  
21 all profits and damages resulting from Defendants' unlawful activities.

22 2. **Injunctive Relief.** That a temporary restraining order, preliminary  
23 and permanent injunction be issued enjoining Defendants and their agents,  
24 servants, employees, and attorneys and those in active concert or participation with  
25 them, from and in any way:

26 a. Using the designations "FINISHING TOUCHES  
27 CONSTRUCTION", or any colorable imitation thereof in any manner in  
28 connection with the providing of construction services, including advertising

1 and promoting construction services; or using Plaintiff's *FINISHING*  
2 *TOUCHES CONSTRUCTION* trade name and service mark, or any  
3 reproduction, counterfeit, copy or colorable imitation of Plaintiff's mark in  
4 any manner in connection with the providing of construction services,  
5 including advertising, promoting, and professional licensing in connections  
6 with construction services or related services;

7 b. Possessing, receiving, manufacturing, distributing, advertising,  
8 promoting, returning, or otherwise disposing of, in any manner, labels, tags,  
9 logos, decals, emblems, signs, and other forms of markings, any packaging,  
10 brochures, business cards, letterhead, flyers, catalogs, price lists,  
11 promotional materials and the like, bearing a copy or colorable imitation of  
12 Plaintiff's trade name or service mark;

13 c. Using any logo, trade name, trademark, or service mark which  
14 may be calculated to falsely represent, or which has the effect of falsely  
15 representing, that the services of defendants or of third parties as sponsored  
16 by, authorized by, or in any way associated with Plaintiff;

17 d. Representing themselves as being connected with, sponsored  
18 by, or in any way associated with Plaintiff, or engaging in any act that is  
19 likely to cause the trade, retailers, and/or members of the purchasing public  
20 to believe that defendants are associated with Plaintiff;

21 e. Otherwise infringing Plaintiff's common law service mark or  
22 trade name, or otherwise unfairly competing with Plaintiff;

23 f. Destroying, altering, disposing of, concealing, tampering with,  
24 or in any manner secreting any and all business records, invoices,  
25 correspondence, books of account, receipts, or other documentation relating  
26 or referring in any manner to the manufacture, advertising, receiving,  
27 acquisition, importation, purchase, sale or offer for sale, or distribution of  
28 any products or services bearing Plaintiff's trade name or service mark or

1 any colorable imitation thereof; and

2 h. That Defendants be required to deliver up to Plaintiff for  
3 destruction all packages, literature, labels, advertising and other materials of  
4 an infringing, false misleading or unfair nature in Defendants' possession or  
5 control and all plates, molds, matrices and other means of making the same;  
6 and

7 i. That Defendants be required to file with the Court and serve on  
8 Plaintiff an affidavit setting forth in detail the manner and form in which  
9 Defendants have complied with the terms of any injunction entered by this  
10 Court.

11 3. **Damages.** That Plaintiff be awarded damages against defendants as  
12 follows:

13 a. Plaintiff's actual damages and Defendants' profits pursuant to  
14 15 U.S.C. section 1117(a); and

15 b. For three times such profits or damages as provided under 15  
16 U.S.C. section 1117(b); and

17 c. Compensatory and other damages pursuant to state law.

18 4. **Restitution, Disgorgement.** For disgorgement of Defendants' ill-  
19 gotten gains resulting from their unlawful activities and restitution of Defendants'  
20 ill-gotten gains to Plaintiff.

21 5. **Constructive Trust.** For an order from the Court that an asset freeze  
22 or constructive trust be imposed over all monies and profits in Defendants'  
23 possession which rightfully belong to Plaintiff.

24 6. **Attorneys' Fees and Costs.** That Plaintiff have and receive their  
25 costs in this action, including an award of reasonable attorney fees pursuant to 15  
26 U.S.C. section 1117 and Federal Rules of Civil Procedure 54(d).

27 7. For such other and further relief as the court deems just and proper.  
28

1 Dated: December 19, 2023

2 SIERRA IP LAW, PC  
3 A Professional Corporation

4 By /William K. Nelson/  
5 William K. Nelson  
6 Attorneys for Plaintiff,  
7 FINISHING TOUCHES  
8 CONSTRUCTION, INC.  
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**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Seventh Amendment to the Constitution of the United States, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: December 19, 2023

SIERRA IP LAW, PC  
A Professional Corporation

By /William K. Nelson/  
William K. Nelson  
Attorneys for Plaintiff,  
FINISHING TOUCHES  
CONSTRUCTION, INC.